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10/749,047	12/30/2003	Cal G. Niemela	DDY-131	7387

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EXAMINER

SPISICH, GEORGE D

ART UNIT	PAPER NUMBER
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3616

DATE MAILED: 03/22/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/749,047

Applicant(s)

NIEMELA, CAL G.

Examiner

George D. Spisich

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37-CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on March 2, 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) 14-17 and 22 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-13 and 18-21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 4/23/04.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Election/Restrictions***

Applicant's election without traverse of Species of Group I, shown in Figures 3-7 in the reply filed on March 2, 2006 is acknowledged.

Applicant states that claims 1-13 and 18-21 read on the elected species, and Examiner concurs. Accordingly, claims 1-13 and 18-21 have been examined in the Office Action.

Claims 14-17 and 22 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim.

### ***Claim Objections***

Claim 10 is objected to because of the following informalities:

In claim 10, line 2, "therein" should be - - thereon - -.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

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The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-13 and 18-21 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1, line 1 and 10 and claim 18, line 1 are unclear. The phrase "such as" is inherently unclear.

Claim 1, lines 3-4 and Claim 18, lines 5-6 are unclear. The phrase "coordinated with the vehicle shape and size of the bumper" is unclear. Not only has the shape of the vehicle or bumper not been claimed, it is unclear to claim the shape in this manner, as the invention would be unclear since the shape of the vehicle/bumper may be different in different vehicles and therefore the shape of the ballast be required to also be different and therefore unclear and indefinite.

Claim 6, line 2 and line 3, claim 7 line 3 and claim 8, line 4, claim 9, line 2, claim 10, line 2 should include the phrase - - at least one - - before "additional plate".

Claims 12 and 13 are unclear since they again refer to the shape of the plates "contoured and shaped to match and coordinate with the shape of the bumper".

Claim 13 is unclear in itself, as this claim states the "additional plates having a shape similar to said first plate but being successively smaller in size". It is unclear to claim the detail of claim 12 that the plates "match and coordinate" and then in claim 13 are "successively smaller".

Furthermore, with respect to claim 13, the limitation that the shapes are "similar" but "successively smaller in size", this is unclear since this would/could be interpreted to

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be the same shape for each plate and the thickness of the plates be successively smaller which is not Applicant's invention. Examiner suggests relating the decreasing shape to the decreasing perimeter of the plates when viewed from the front while remaining similar in shape.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-12 and 18-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fortier et al. (USPN 6,209,898) in view of Wykhuis et al. (USPN 4,580,811).

Fortier et al. disclose a ballast assembly having a predetermined weight and a contour coordinated with a vehicle shape at one area of the vehicle or the bumper. This language is lacking structure and Fortier et al. meets this limitation.

Fortier et al. discloses a mounting member (22) projecting outwardly from the ballast member (considered to be the first plate numbered 32) for removable engagement with the vehicle. When installed, the pieces are integral and the first plate is considered to have the mounting member as a part thereof. The mounting member is

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an elongated projection adapted to be received in a hitch socket receiver at one end of the vehicle adjacent the vehicle bumper.

As member 22 extends through ballast member 32, it provides a projection as a support means for receiving and supporting additional ballast weight to the assembly.

The first plate (32) and the additional plates are planar and adapted to be stacked one against the other.

The additional plates include a first aperture for receiving the support projection. The supporting projection includes a fastener for retaining a plurality of additional plates on the assembly.

With respect to claim 12 and 18, the unclear limitation that the plates are shaped and contoured to match and coordinate with the bumper is sufficiently broad so as that the plates of Fortier et al. meet this limitation as these plates "match and coordinate".

However, Fortier et al. does not disclose that this ballast assembly is mounted for providing a counterbalance for an implement on the vehicle, nor does Fortier et al. disclose having second and third mounting projections from the ballast assembly and apertures on the additional plates where the plates are mounted on the second and third projections and fasteners are provided for the second and third projections for securing the additional plates on the ballast assembly.

Wykhuis et al. discloses providing a ballast assembly on the rear of the vehicle to counterbalance an implement mounted on the front of the vehicle (see the Abstract). Furthermore, Wykhuis et al. discloses providing spaced apart projections for mounting additional plates thereon. The slots of the additional plates are broadly considered

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apertures and there are fasteners (50) that in addition to secure the assembly to the vehicle, secure the additional plates on the ballast member.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide second and third spaced mounting projections with fasteners on the ballast member of Fortier et al. as taught by Wykhuis et al. that would provide added stability and restrain "twisting" of the plates.

### ***Allowable Subject Matter***

Claim 13 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Prior Art does not show a ballast assembly having a plurality of additional plates having a similar and successively smaller outer perimeter when viewed from the front as Examiner is interpreting claim 13 to claim.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Latterman et al. (USPN 3,490,787), Barrett (USPN 3,032,352), Fortier et al. (USPN 6,209,898), Jeffers et al. (USPN 5,462,309), Wykhuis et al. (USPN 4,580,811), Bourgeois et al. (USPN 4,232,883), Allori (USPN 3,730,545), Muellner

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(USPN 4,068,876), Welke et al. (USPN 4,094,534), Powell (USPN 6,880,854), Schott (USPN 6,471,245), Schultz (USPN 4,664,404).


Any inquiry concerning this communication or earlier communications from the examiner should be directed to George D. Spisich whose telephone number is (571) 272-6676. The examiner can normally be reached on Monday-Friday 9:00 to 6:30 except alt. Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Paul Dickson can be reached on (571) 272-6669. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

George D. Spisich  
March 18, 2006



 3/20/06  
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